

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 787 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.

2. To be referred to the Reporter or not? No. @@2.
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

STATE OF GUJARAT

Versus

SAFI RAJAKBHAI ALEK

Appearance:

MR. MA BUKHARI, APP, for the appellant .

MR JAYANT M PANCHAL for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS and

MR.JUSTICE A.M.KAPADIA

Date of decision: 12/02/99

ORAL JUDGEMENT

PER:K.R.VYAS,J

The State of Gujarat has preferred the present appeal and has challenged the legality and validity of the judgment and order dated 7-8-1991 passed by the learned Additional Sessions Judge, Gondal in Sessions Case No. 65/90 acquitting all the respondent-accused of the offences punishable under Sections 302, 307 read with Sections 143, 147, 148 and Section 452 read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act.

As can be seen from the charge, Ex.1, on 21-6-90 at about 20.30 hours all the accused entered the Rice Mills situated in Upleta Panch Hatadi Chowk and belonging to deceased Razakbhai with deadly weapons like Dharia, knife, pipe and they all inflicted blows on the deceased and thereby committed his murder and also caused injuries to Ramji Ghela (PW 3, Ex.25). The learned Additional Sessions Judge, Gondal who tried the accused for the aforesaid offences, after consider the evidence on record, was of the view that the prosecution has failed to prove the charges levelled against the respondent-accused and on giving benefit of doubt to the accused, passed the order of acquittal.

Mr.M.A.Bukhari, learned Additional Public Prosecutor, after taking us through the evidence on record, submitted that the learned Additional Sessions Judges has committed an error in passing the order of acquittal inasmuch as there are as many as six eye witnesses, including the injured witness. In the submission of Mr.Bukhari, even though there are certain contradictions as well as improvements in the evidence of the prosecution witnesses, they will not save the situation inasmuch as the deceased Razak Latif lost the life at the hands of the accused. Mr. Bukhari highlighted the fact that the incident in question happened in the Ice-creem shop of the deceased and, therefore, the accused were aggrerssors. Mr.Bukhari, therefore, submitted that the appeal deserves to be

allowed.

Mr. Jayant M. Panchal, learned Advocate appearing for the respondents, however, supported the judgment and order of acquittal passed by the learned Additional Sessions Judge in toto.

Jadav Razak (PW 1, Ex.11), who is the son of the deceased and also the complainant in the present case, in his evidence has stated that he is having Ice-cream and Cold Drink shop in the area known as Panch Hatadi Chowk, Upleta. Just adjacent to his shop there is a Pan shop of his brother Nasir. According to him, on 21-6-90 at about 8.00 or 8.30 a.m. he was in the shop and his father was sitting on the Ota outside the shop. His cousin brother Munaf Hussain (PW 17, Ex.98) was also there in the shop. This witness has further stated that Ramji Ghela alias Balabhai (PW 3, Ex.25) and Yusuf Umar (PW 8, Ex.59) were also sitting with his father. Bhagwanji Chhagan (PW 6, Ex.58) and Kadar Latif (PW 16, Ex.97) were sitting on the bench opposite to his shop. At that time all the accused came there. Accused No.2 asked his father to get up for quarrel. When his father while getting up inquired as to for what reason he wanted to quarrel with him, accused No.5 inflicted a knife blow on the chest of his father. Accused No.6 also inflicted a knife blow. Accused No.2 inflicted knife blow on the back of his father. When his father wanted to run away, accused No.1 also inflicted a knife blow. Accused No.1 was having a Dharia and his son accused No.7 was having a pipe. When accused No.4 was about to inflict Dharia blow to his father, Ramji Ghela Balabhai intervened as a result of which he sustained injuries. According to this witness his father as well as Balabhai both were bleeding. All the accused thereafter ran away. This witness as well as his uncle Kadarbhai took his father to hospital in a rickshaw. Balabhai was also brought to the hospital in a rickshaw. The doctor, after examining his father, declared him dead. According to this witness, the police came there and took down his complaint.

About the cause of incident, this witness has stated that his father settled the dispute between Iqbal and Yusuf; however his father did not compromise the dispute between Iqbal and accused No.5 and, therefore, accused No.5, with the help of other accused, killed his father. This witness identified all the accused in the Court.

This witness is cross-examined at length by the defence. Having read the cross-examination of this

witness, in our opinion, the defence has successfully brought out number of contradictions, omissions and improvements in the evidence of this witness. The complainant was asked about the number of cases filed against his father to which he initially denied. However, he has to admit the cases filed against his father when copies of the complaints were shown to him . The complainant has also not explained the blood and blood stains found inside the shop nor he has explained the injuries sustained by the accused and more particularly accused No.1. The complainant has given details about the part played by each of the accused before the Court; however, he has not given those details in his police statement.

Ramji Ghela alias Balabhai (PW 3, Ex.25) is the injured witness and, therefore, his presence at the scene of offence was natural. This witness has corroborated the say of the complainant Jadav regarding the part played by all the accused. However, reading his evidence it appears to us that he is not a truthful witness and, therefore, his evidence does not inspire any confidence. This witness is serving in Upleta Municipality. On the day of the incident, he had gone to the shop of the deceased at about 7.30 a.m. He was sitting with the deceased on the Ota facing the corner of Mota Falia. At that time Yusufmiya also came. He has also stated that opposite to the shop of the deceased, witness Bhagwanji and Kadarbhai were also sitting on the bench. Regarding the injuries inflicted by each of the accused on the person of the deceased as well as himself, he has given the same details as stated by the complainant. He has also stated that soda bottles were also thrown from Turiya Pan House which is near the shop of the deceased. According to him , even the police of Upleta has also recorded his statement. Thus on all material aspects, he has corroborated the version of the complainant. However, he has changed the story in the cross-examination . The defence, in the cross examination of this witness has successfully brought out that this witness alongwith the deceased, PW 7, 8 and PW 16 were involved in number of criminal cases. It appears that the deceased in the company of this witness was engaged in the gambling activity. The deceased was also booked under PASA. This witness has also admitted that he has worked as a Panch in number of cases. This witness has not at all explained the injuries on the persons of the accused. This witness has maintained that the incident took place on the Ota i.e.outside the shop and has pleaded ignorance about the blood and the blood stains found inside the shop. This witness has

contradicted his police version regarding the part played by accused Nos.4 and 7. Even though this witness in his police statement has stated that PW 7 as well as PW 6 were sitting with him and the deceased was sitting on the Ota, in the evidence before the Court he has stated that the said two witnesses were sitting on the bench near Dadibhai Hall opposite the shop of the deceased.

Munaf Hussain (PW 17, Ex.98) who, at the relevant time, was in the shop and therefore even though he has corroborated the say of the complainant about the incident, his evidence is also on the same line as that of the complainant.

Yusuf Umar (PW 8, Ex.59) in his evidence has stated that when Razak was being beaten by the accused, he had hidden himself in the shop. However, he has not stated this fact in his police statement. The complainant as well as Munaf Hussain (PW 17) have also corroborated the version of Yusuf Umar. Even this witness has also not explained about the presence of blood or blood stains inside the shop. Similarly no explanation whatsoever has been given by this witness regarding the injuries sustained by the accused. This witness in his police statement has clearly stated that he and Bhagwanbhai (PW 7) were sitting with Kadarbhai on the Ota of the shop. However, in the evidence he has come out with the case that he was sitting near Dadibhai Hall.

Bhagwanji Chhaganbhai (PW 7, Ex.58) in his evidence has given similar version as that of Kadarbhai. Reading the evidence of this prosecution witnesses, it clearly appears to us that in view of the contradictions in their police statements and improvements made in their evidence before the Court, their presence at the time of the incident was absolutely doubtful. All the prosecution witnesses have maintained that the incident in question had happened on the Ota of the shop of the deceased i.e. outside the shop of the deceased. The Panchnama ,Ex.88, of the scene of offence clearly reveals that inside the shop in the family room there were blood stains. Even near the door, there were many blood stains. the blood was collected with the help of cotton and stored in a bottle. In view of this, it is clear that some incident must have taken place inside the shop. Surprisingly, however, the prosecution witnesses have pleaded total ignorance about the same. Ex.44 is the certificate of the injuries of accused No.1 issued by the Medical Officer, Cottage Hospital, Upleta. There were as many as six injuries like contused lacerated wounds,

swellings and two incised wounds. Similarly Ex.46 is the certificate of injuries issued in respect of accused No.5 and Ex.48 is the certificate of injuries issued in respect of accused No.6. Even though three out of seven accused sustained injuries and especially when accused No.1 had sustained serious injuries for which a cross-case was also filed against the prosecution witnesses, and yet the prosecution witnesses have changed the story that the incident had taken place in the shop and have given no explanation about the injuries sustained by the accused. This would go to suggest that prosecution witnesses have either no regards for the truth or that they were not present at all at the time and place of the incident. The fact that the prosecution witnesses have denied the involvement of the deceased as well as their involvement in criminal cases registered against them and initially were required to admit the same when they were confronted with the complaint, would go to suggest that the prosecution witnesses and more particularly Ramji Ghela are liars. The fact that none of the prosecution witnesses has given explanation regarding the damage caused to the utensils and furniture inside the shop would further go to suggest that the incident had taken place in the shop. It has also come in the evidence that the blood group of the deceased as well as accused No.1 - was the same i.e. "B" group. The blood collected from inside the shop as well as from the Ota was also of "B" group. As the evidence reveals, the deceased was kept on the Ota before he was taken to the hospital and the possibility of the blood having "B" group found from the Ota of the deceased cannot be ruled out. However, the fact remains that the main incident had taken place inside the shop. If the incident had taken place inside the shop, in that case, it would not be possible for any of the prosecution witnesses, except the complainant and Munaf Hussain (PW 17) who were inside the shop, to witness the incident. We have perused the sketch Ex.15, showing the details about the shop as well as the surrounding area of the shop. In view of the fact that there are only two doors of the shop and in view of the fact that the blood was found near the doors of the family room, the claim of the witnesses to have witnessed the incident does not appear to be genuine. In our view, it was not possible for them to witness the incident from the place where they were sitting. In view of this, it is not possible for us to accept the evidence of the so-called eye witnesses produced by the prosecution. We are conscious of the fact that in view of the medical evidence on record that the deceased sustained as many as 26 injuries and therefore it was a homicidal death. However, on the

basis of the evidence given by the highly interested witnesses, who are the close relatives and friends of the deceased and who have no regard for the truth, the possibility of the false involvement of the accused at their instance cannot be ruled out. In our opinion, it would be totally unsafe to convict the accused for the serious offence of murder relying on the testimony of these highly interested witnesses.

Apart from the evidence of the witnesses, even the manner in which the investigation was carried out by the Investigating Officer creates a serious doubt regarding the happening of the incident as suggested by the prosecution. It has come in the evidence of the injured witness Ramji Ghela that the Mamlatdar and the Executive Magistrate recorded his statement. Not only that but his statement was also recorded by Junagadh Police when he was admitted in Junagadh Hospital. Before he was taken to Junagadh Hospital, the Upleta Police also recorded his statement. In view of the evidence of this witness, in the examination-in-chief that when he was taken in a rickshaw to Upleta Hospital, the police at Upleta Hospital recorded his statement. Now this fact has been admitted by Head Constable Bhagwanji Parshottam (PW 23, Ex.108) of Junagadh City Police Station wherein he has stated that this witness Ramji Ghela stated before him that PSI Shri Jhala of Upleta Police Station has recorded his complaint. Unfortunately, however, the prosecution has not produced this complaint which was the first in the point of time and containing the earliest version about the incident. Thus, the prosecution has suppressed the genesis of the prosecution case and made the entire case doubtful.

In view of the above discussion, in our opinion, the prosecution has failed to prove the charges levelled against the respondent-accused beyond reasonable doubt. In our opinion the learned Additional Sessions Judge was perfectly justified in acquitting all the accused by giving benefit of doubt. We concur with the reasoning of the learned Additional Sessions Judge in passing the order of acquittal. In that view of the matter, we see no merits in this appeal.

In the result, this appeal fails and is dismissed. Bail bonds stand cancelled.

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